

REMARKS

The invention relates to a digital label for a product that is intended to replace or supplement existing metal, leather, and fabric labels. The digital label comprises an electronic display and associated memory for storing label information. Label information is defined to mean a brand name or logo, product information, or source information. None of the prior art cited by the Examiner discloses an electronic label for products. For reasons set forth below, the Examiner's rejections of the claims should be reversed.

Claims 1-15, 18, 19 and 22-46 Are As Definite As the Subject Matter Permits

The Examiner asserts that the phrase "wherein the electronic display is not associated with the inherent function of the product" is indefinite. On the contrary, the recited language is intended to exclude displays that are an inherent feature of the product. For example, a display for a cell phone or computer that is part of the user interface is excluded from the scope of the claims. However, a separate label display for a cell phone or computer that functions only as a label and does not function as part of the user interface would be included within the scope of the claim. This language, when read in light of the specification, would be readily understood by those skilled in the art and is as precise as the English language allows. "If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree, we have held the claim sufficiently clear to avoid invalidity on indefiniteness grounds." *Exxon Research and Engineering Co. v. U.S.*, 265 F.3d 1371, 60 U.S.P.Q.2d 1272 (Fed. Cir. 2001).

The Examiner argues that the claim is contradictory on its face because the display outputs information about the product and is therefore associated with the inherent function of the product. The Examiner has simply confused the issue. The display may output information concerning the product, but the display itself is not required as part of the inherent function of the product. Accordingly, Applicant does not believe that the language is indefinite.

The Examiner further asserts, with regard to independent claim 29, that the recitation of “label information, product information, or source information” renders the claim indefinite since the product is not being claimed as part of the invention. Applicant concurs that the product itself is not being claimed. However, the product is recited in the claim to provide context for the invention. There is nothing improper about making reference to unclaimed elements as a way of defining a claimed element. In this case, the reference to product information simply serves to define the type of the output information, which is being claimed.

Claims 1, 2, 5-8, 29, 30 and 33-36 Are Not Obvious over Gomersall In View of

Schwendeman

Claims 1 and 29 both recite a base adapted to be affixed to a product. Claims 1 and 29 further recite an electronic display and a programmable circuit programmed to output information about the product to the display. Clearly, the reference to product in the definition of the output information refers to the product to which the base is attached. Thus, according to the plain language of claims 1 and 29, the programmable circuit must output information about the product to which the label is attached.

Neither Gomersall nor Schwendeman disclose a label adapted to be affixed to a product and which has a display for displaying product information concerning the product to which the label is attached. The display device disclosed in Gomersall attaches to a display shelf on which other products can be displayed. The information displayed (e.g., price information) concerns the products displayed on the display shelf, not about the display shelf. Schwendeman discloses a display for displaying information. Schwendeman further discloses that the information can be animated. However, the display in Schwendeman is not adapted to attach to a product and does not display information related to the product to which the label is attached. Therefore, claims 1, 2, 5-8, 29, 30 and 33-36 are patentable over Gomersall nor Schwendeman.

1 – 16, 18, 19, 26-42, 44-45, 57-60 and 62-90 Are Not Obvious over Fitch In View of

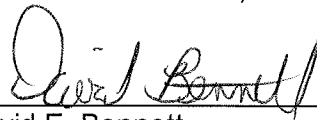
Schwendeman

Independent claims 1 and 9 require that the information output to the display be “about the product” to which the label is attached. Similarly, Independent claims 29 and 47 require that information output to the display be “product information or source information.” The terms product information and source information are defined in the specification.

Neither Fitch nor Schwendeman disclose a label adapted to be affixed to a product and which has a display for displaying information concerning the product to which the label is attached. Fitch discloses a display that can be attached to a garment to display video. The video display provides a means of self expression. There is no suggestion in Fitch to use the display as a label to display information about the product or its source. Schwendeman discloses a display for displaying information. Schwendeman further discloses that the information can be animated. However, the display in Schwendeman is not adapted to attach to a product and does not display information related to the product to which the label is attached.

1 – 16, 18, 19, 26-42, 44-45, 57-60 and 62-90 are not obvious over Fitch in view of Schwendeman.

Respectfully submitted,
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